IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRL.A.No. 1320 of 2006()

AGAINST THE ORDER IN CRL.LP.266/2006 Dated 12/06/2006
AGAINST THE ORDER DATED 20/02/2006 IN CC.1762/2002 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

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APPELLANT: COMPLAINANT

P.K.RASHEESAN, S/O.KESAVAN,
RESIDING AT CHARUVILA HOUSE, MAYYANADU P.O.,
KOLLAM.

BY ADV. SRI.AJAYA KUMAR. G

RESPONDENTS: STATE AND ACCUSED
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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. KAMARUDDIN, S/O.MERA SAHIB,
ABIDA MANZIL, KOTTIYAM P.O.,
NADUVILAKKARACHERRY, MAYYANAD VILLAGE,
PROPRIETOR, MOOLAKKADA STORES, KOTTIYAM.

3. MOOLAKKARA STORES, KOTTIYAM.

BY PUBLIC PROSECUTOR, SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Crl. Appeal No.1320 of 2006 (C)

Dated this the 14th February, 2007.

JUDGMENT

The appellant is the complainant in C.C.No.1762/2002 on the file of Judicial First Class Magistrate Court-II, Kollam. He preferred the complaint under Sec.138 of the Negotiable Instruments Act. The copy of the proceedings paper, produced by the appellant, reveal that he was contesting the case himself and was present before the court below, in number of postings, from 23/06/2002 to 31/03/2005. However, thereafter, as could be seen, from 08/07/2005, a power of attorney holder was representing the complainant. On 20/01/2006, the power of attorney holder was examined as PW.1 and Exts.P1 to P7 were marked. Accused got the cross examination adjourned. On the next posting also the power of attorney holder, who is a practicing advocate of the same Bar, was present before the court below but the accused got the same again adjourned to another date. On that day, there was no

representation from the complainant. Holding that the cross-examination of PW.1 is necessary, the learned Magistrate dismissed the complaint and acquitted the accused. Hence, the complainant himself is before this Court, through this appeal, on obtaining leave of the Court.

2. I have heard the arguments advanced by the learned counsel for the appellant. Though the service in respect of the second respondent is complete, there is no representation.

3. The cause title reveals the name of the complainant himself. No mention is made that complainant was represented by the power of attorney holder. However, the body of the impugned order dated 20/02/2006 show that the power of attorney holder was prosecuting the matter.

4. I am not entering into any discussion on the defect of the cause title, not mentioning the name of the power of attorney holder and the learned Magistrate, not mentioning the name of the power of attorney holder, stating that whether the complainant has applied or made any

attempt to get the power of attorney released. However, in order to give a relief to the litigants, without adhering to the technicalities, I set aside the impugned order dated 20/02/2006 and restore C.C.No.1762/2002 to the file of the Judicial Magistrate of the First Class-II, Kollam.

5. The appellant complainant shall appear before the court below on 20/03/2007.

6. As the respondent accused is not before this Court, despite the receipt of the notice, I direct the learned Magistrate to take coercive steps, to get his presence.

7. The learned Magistrate shall dispose of the matter as expeditiously as possible, and in any case, within two months from the date of production/appearance of the accused before that court.

Appeal is allowed as above.

J.M. JAMES,
JUDGE.

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